

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOUG GODDARD)	
Claimant)	
VS.)	
)	
STEFFEN DAIRY FOODS COMPANY, INC.)	Docket No. 180,088
Respondent)	
AND)	
)	
NATIONAL UNION FIRE INSURANCE)	
COMPANY NY)	
Insurance Carrier)	

ORDER

On April 17, 1997, the application of claimant for review by the Workers Compensation Appeals Board of the November 6, 1996, Order of Administrative Law Judge John D. Clark denying claimant's request for penalties came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, John L. Carmichael of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Christopher T. Wilson of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record considered by the Appeals Board includes the preliminary hearing transcript of November 5, 1996, the preliminary hearing of December 14, 1995, and the deposition of Dr. Robert L. Eyster, M.D., taken on behalf of respondent on October 21, 1996.

ISSUES

Whether the Administrative Law Judge erred in denying claimant's request for penalties pursuant to K.S.A. 44-512a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record above described, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant requested penalties pursuant to K.S.A. 44-512a alleging respondent failed to comply with the Order of Administrative Law Judge John D. Clark dated December 14, 1995. In that order the Administrative Law Judge required that respondent pay a medical bill in the amount \$111.00 to the Wichita Urology Group; required respondent set up a credit account at a pharmacy of their choice; reinstated the previous vocational rehabilitation order; and ordered Dr. Eyster as the authorized treating physician for claimant's knee problems, including an MRI.

Claimant initially alleged accidental injury from April 26, 1993, through June 1, 1993, while working for the respondent. Claimant's accidental injury involved both his low back at the L4-5 and S-1 levels and his left knee. Claimant underwent examination and treatment including surgery to the low back in April 1994. On October 18, 1995, Dr. Eyster indicated claimant had reached maximum medical improvement discussing, specifically, the fusion in claimant's low back. At that time, Dr. Eyster indicated that claimant did not want to proceed with the MRI study of his knee. Claimant's complaints were more of a patella femoral irritation and Dr. Eyster opined that exercise would be the most beneficial treatment for this knee condition. Claimant was rated at 12 percent to the body as whole for the back injury with no rating for the knee.

The parties proceeded to preliminary hearing on December 14, 1995, which resulted in the December 14, 1995, order from Judge Clark authorizing Dr. Eyster as the treating physician for claimant's knee problems and granting claimant an MRI. In his December 20, 1995 report, Dr. Eyster again diagnosed patella femoral irritation and capsular strain without ligament or the meniscus problems in the knee. Dr. Eyster discussed a previous MRI study which he had found to be negative. No follow up MRI was recommended and claimant's restrictions and disability remained unchanged.

Subsequent to that examination claimant returned to work with a different employer. On June 11, 1996, claimant returned to Dr. Eyster's office alleging pain in the low back region. He was requesting physical therapy including phonophoresis, deep heat, and modality treatment which had helped in the past. The physical therapy ordered by Dr. Eyster was provided from June 14, 1996 through June 28, 1996, with St. Joseph Medical Center in Wichita, Kansas. The total cost of this treatment came to \$521.60. It is this medical bill which is the basis for claimant's request for penalties. Subsequent to

this treatment Dr. Eyster was contacted by respondent and advised no further medical treatment would be authorized for claimant's knee.

Claimant requested payment of this physical therapy bill as authorized medical care with Dr. Eyster, the authorized treating physician. Claimant's demand for payment was provided to respondent by certified mail and received on September 30, 1996. A reply letter from respondent's attorney, also dated September 30, 1996, indicated some question had arisen regarding the cause of claimant's current symptoms. As Dr. Eyster had not provided treatment to claimant for several months and as claimant had obtained new employment with Leekers, some question regarding the necessity for this physical therapy remained. Respondent's attorney did request, since Dr. Eyster's testimony was scheduled for October 21, 1996, that the decision regarding the payment of this bill be deferred until after the deposition of Dr. Eyster. Respondent's attorney offered that if Dr. Eyster testified that this was not a new injury, the bill would be paid.

At the October 21, 1996, deposition Dr. Eyster, confirmed the physical therapy provided to claimant in June 1996, stemmed from the original injury. Respondent again wrote claimant's attorney on October 24, 1996, advising that the bill to Via Christi St. Joseph's would be paid. Respondent's attorney did caution that the penalty hearing scheduled before the Administrative Law Judge Clark on November 5, 1996, was too soon for respondent to process a check. Respondent's attorney requested an additional two weeks to allow for receipt of the check. This request was rejected by claimant through his attorney who indicated that if the bill was not paid by November 5, 1996, the hearing would go forward. The hearing occurred on November 5 as noticed and, at that time, the payment of the medical bill had not been made. A November 4, 1996, letter from Crawford and Company to the Administrative Law Judge indicated that the bill had been submitted for audit and would be paid as soon as the audit was completed.

The bill, after having been reduced as a result of the audit to \$469.44 was paid on November 13, 1996. Additional collection efforts by Via Christi St. Joseph's in December 1996, were apparently made in error and, once proof of payment was presented, these collection efforts ceased.

K.S.A. 44-512a grants a penalty in the amount equal to \$25.00 or 10 percent of any medical bill which is past due if unpaid after service of written demand for payment. In this instance, a legitimate question existed regarding whether this bill originated from treatment associated with claimant's original injury or as the result of a new injury suffered by claimant at his new employment with a different respondent. Until those questions were answered by Dr. Eyster, the Appeals Board cannot find that penalties are appropriate. In addition, the notice by respondent on October 24, 1996, of its intent to pay this bill, coupled with the November 13, 1996, payment further convinces the Appeals Board that penalties in this matter are inappropriate. Therefore, the Appeals Board finds that the Order of Administrative Law Judge John D. Clark dated November 6, 1996, denying claimant's request for penalties should be, and is hereby, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated November 6, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John L. Carmichael, Wichita, KS
Christopher T. Wilson, Overland Park, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director